


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2001-471-C - ORDER NO. 2002-553

JULY 29, 2002

IN RE: Application of TRI-M Communications, Inc. d/b/a TMC Communications for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Interexchange Telecommunications Services and for Alternative Regulation.) ORDER APPROVING) CERTIFICATE AND) MODIFIED) ALTERNATIVE) REGULATION)
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This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of TRI-M Communications, Inc. d/b/a TMC Communications (“TRI-M” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate interexchange telecommunications services within the State of South Carolina. In addition, the Company requests that the Commission regulate its business services offerings under the identical regulatory treatment granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission’s Executive Director instructed TRI-M to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of TRI-M’s Application

and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on July 11, 2002, at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. TRI-M was represented by Scott Elliott, Esquire. F. David Butler, General Counsel, represented the Commission Staff.

John Marsch, President and Chief Executive Officer of TRI-M, appeared and testified in support of the Application. As Chief Executive Officer, Mr. Marsch is responsible for coordinating all technical, administrative, and regulatory issues relating to new and/or existing services of TRI-M. The record reveals that Mr. Marsch has extensive business experience working in management positions with telecommunications companies.

According to the testimony, TRI-M is certificated in 49 states, and that South Carolina is presently the only state in which it is not certificated. TRI-M seeks authority to offer on a resale basis within South Carolina intrastate, interLATA and, to the extent authorized by the Commission, intraLATA direct-dialed services including 1+ service, flat rate service, 800 inbound service, and travel cards. (The Company does not wish to offer pre-paid calling cards to its customers.) TRI-M seeks statewide authority to provide intraLATA services authorized by the Commission in Docket Nos. 92-182-C, 92-183-C, and 92-200-C. TRI-M has no plans at this time to construct any telecommunications

transmission facilities of its own and seeks no construction authority. TRI-M will operate exclusively as a switchless reseller. TRI-M will market its services via direct sales through its employees and independent sales agents.

According to the testimony, TRI-M has sufficient technical, financial, and managerial resources and ability to provide the telecommunications services for which authority is sought. TRI-M's personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience, according to Mr. Marsch. With regard to the financial qualifications, Mr. Marsch notes that he has funded the operations of the Company, and that all corporate profits go back into the Company.

Mr. Marsch indicates a desire to have the Company's business services regulated by modified alternative regulation.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. TRI-M is organized as a corporation under the laws of the State of California and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. TRI-M is a provider of long distance services and wishes to provide long distance services in South Carolina.

3. TRI-M has the experience, capability, and financial resources to provide the services as described in its Application

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to TRI-M to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the long distance services of TRI-M which is consistent with the principles and procedures established for alternative regulation for business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under the Commission approved alternative regulation, the business service offerings of TRI-M including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 96-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of

\$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to TRI-M also.

3. The Commission adopts a rate design for TRI-M for its provision of residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. TRI-M shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. TRI-M shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16,

1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1999).

5. If it has not already done so by the date of issuance of this Order, TRI-M shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, TRI-M shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 (1976) with its final Tariff.

6. TRI-M is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. An end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. TRI-M shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, TRI-M shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms.

The title of this form is “Annual Information on South Carolina Operations for Interexchange Companies and AOS.” This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. TRI-M shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, TRI-M shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal

Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. By its Application and testimony at the hearing, TRI-M requested a waiver from the Commission's requirement to maintain its books within the State of South Carolina according to 26 S.C. Code Ann. Regs. 103-610 (1976). The Commission grants the Company's request to waive the record keeping regulation so that its books and records may be kept at its principal office and headquarters. GAAP may also be used for financial record keeping for the Company.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

14. At the hearing, the Company indicated that it had inadvertently billed for some \$264 per month in incidental traffic. However, the Company also stated that it had not solicited customers or marketed its services in South Carolina. The billing apparently occurred after a customer moved to South Carolina without the Company's initial knowledge. We believe that billing for the incidental traffic by this Company was indeed inadvertent, and we therefore waive potential refunds of this amount.

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15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)